

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS DARRYL CUTLER****DEFENDANTS BERMAN & RABIN, P.A.**

**(b)** County of Residence of First Listed Plaintiff MONTGOMERY  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant KANSAS  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

**(c)** Attorney's (Firm Name, Address, and Telephone Number) Cary L. Flitter, Esq., and Theodore E. Lorenz, Esq., Flitter Lorenz, P.C., 450 N. Narberth Avenue, Suite 101, Narberth, PA 19072, (610) 822-0782

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | PTF  | DEF   | PTF                        | DEF                        |
|--|---|----------------------------|----------------------------|
| Citizen of This State <input type="checkbox"/> 1                   | <input type="checkbox"/> 1 Incorporated <i>or</i> Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State <input type="checkbox"/> 2                | <input type="checkbox"/> 2 Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 | <input type="checkbox"/> 3 Foreign Nation   | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN** (Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened

Transferred from ☐ 5 another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause: FDCA 15 USC § 1692

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

**DEMAND \$**

CHECK YES only if demanded in complaint  
**JURY DEMAND:** ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

## UNITED STATES DISTRICT COURT

APPENDIX F

**FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM** to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 915 Exeter Crescent, Villanova, PA 19085-2001

Address of Defendant: 15280 Metcalf Avenue, Overland Parks, KS 66223

Place of Accident, Incident or Transaction: 915 Exeter Crescent, Villanova, PA 19085-2001

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock? (Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities? Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: \_\_\_\_\_ Judge \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court? Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

*A. Federal Question Cases:*

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases  
(Please specify) FDCPA, 15 USC § 1692

*B. Diversity Jurisdiction Cases:*

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability (Asbestos)
9. ☐ All other Diversity Cases  
(Please specify)

**ARBITRATION CERTIFICATION**

(Check appropriate Category)

I, \_\_\_\_\_, counsel of record do hereby certify:

☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

☐ Relief other than monetary damages is sought

DATE: \_\_\_\_\_

Attorney-at-Law

Attorney I.D.

**NOTE:** A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 7/10/13

CIV.609 (4/03)

Attorney-at-Law

Attorney I.D.

## APPENDIX I

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

DARRYL CUTLER

V.

BERMAN &amp; RABIN, P.A.

CIVIL ACTION

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. §2241 through §2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( X )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases) ( )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ( )

7/10/13  
Date

  
Attorney at Law

Andrew M. Milz  
Attorney for Plaintiff

(610) 822-0782  
Telephone  
(Civ.660) 10/02

(610) 667-0552  
Fax Number

Amilz@consumerslaw.com  
E-Mail Address

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DARRYL CUTLER  
915 Exeter Crescent  
Villanova, PA 19085-2001

Plaintiff

vs.

BERMAN & RABIN, P.A.  
15280 Metcalf Avenue  
Overland Parks, KS 66223

Defendant

CIVIL ACTION

NO.

**COMPLAINT**

**I. INTRODUCTION**

1. This is an action for damages brought by a consumer pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 (“FDCPA”).

2. The FDCPA prohibits debt collectors from engaging in deceptive and unfair practices in the collection of a consumer debt.

3. Defendant is subject to strict liability for sending a collection letter which violates the provisions of the FDCPA.

**II. JURISDICTION**

4. Jurisdiction arises under 15 U.S.C. § 1692k, and 28 U.S.C. § 1337.

### **III. PARTIES**

5. Plaintiff Darryl Cutler ("Plaintiff") is a consumer who resides in Villanova, Pennsylvania at the address captioned.

6. Defendant Berman & Rabin, P.A. ("Berman" or "Defendant") is a Kansas collection firm with an office for the regular transaction of business at the address captioned.

7. Defendant regularly engages in the collection of consumer debts in the Eastern District of Pennsylvania using the mails and telephone.

8. Defendant regularly attempts to collect consumer debts alleged to be due another.

9. Defendant is a "debt collector" as that term is contemplated in the FDCPA, 15 U.S.C. § 1692a(6).

### **IV. STATEMENT OF CLAIM**

10. On October 2, 2012, Berman sent Plaintiff a form collection letter in an attempt to collect an alleged credit card debt. A copy of the October 2, 2012 letter is attached hereto as Exhibit A (redacted in part per Fed. R. Civ. 5.2).

11. The letterhead of the October 2, 2012 letter indicates it was sent from:

**BERMAN & RABIN, P.A.  
ATTORNEYS AT LAW**

(Ex. A).

12. The October 2, 2012 collection letter goes on to state that Berman "represents the above referenced creditor" to collect the alleged debt, but then says: "At this time no attorney with our law firm has personally reviewed the particular circumstances of your account."

13. The October 2, 2012 collection letter represents or implies that a lawyer has reviewed the file, made appropriate inquiry, and has exercised professional judgment in the sending of the collection letter. There was no such involvement.

14. In reality, and unbeknownst to the consumer, Berman sends this form collection letter in its capacity as a debt collector only and not as a law firm acting like a real law firm should.

15. The sentence in the October 2, 2012 collection letter, "At this time, no attorney with our law firm has personally reviewed the particular circumstances of your account", it itself is confusing, and does not ameliorate the effect of the collection letter sent on attorney letterhead. The remark merely confirms that the requisite attorney involvement was lacking.

16. The FDCPA prohibits debt collectors from using any false, deceptive, or misleading representations or means in connection with the collection of any debt. 15 U.S.C. § 1692e.

**COUNT I - FAIR DEBT COLLECTION PRACTICES ACT**

17. Plaintiff repeats the allegations contained above as if the same were here set forth at length.

18. The acts by Defendant described above violated the Fair Debt Collection Practices Act by using false, deceptive, or misleading representations or means in connection with the collection of any debt, in violation of 15 U.S.C. § 1692e, § 1692e(3) and § 1692e(10).

**WHEREFORE**, Plaintiff Darryl Cutler demands judgment against Defendant  
Berman & Rabin, P.A., for:

- (a) Damages;
- (b) Attorney's fees and costs; and
- (c) Such other and further relief as the Court shall deem just and


proper.

**V. DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury as to all issues so triable.

Respectfully submitted:

Date: 7/10/13

  
CARY L. FLITTER  
THEODORE E. LORENZ  
ANDREW M. MILZ  
Attorneys for Plaintiff

**FLITTER LORENZ, P.C.**  
450 N. Narberth Avenue, Suite 101  
Narberth, PA 19072  
(610) 822-0782

# **EXHIBIT “A”**



**BERMAN & RABIN, P.A.**  
 ATTORNEYS AT LAW  
 15280 METCALF AVE.  
 OVERLAND PARK, KS 66223  
 P.O. BOX 24327-66283  
 FAX: (913) 649-2335

October 2, 2012

Re: Your indebtedness to: Barclay Bank Delaware, Assignee of US AIRWAYS MASTERCARD  
 Balance: [REDACTED]  
 Our File No. [REDACTED]-22

Dear Mr. CUTLER:

This office represents the above referenced creditor. At this time, no attorney with this firm has personally reviewed the particular circumstances of your account. In the event a lawsuit is filed against you, that lawsuit will be filed by a separate law firm in your area.

Unless you dispute this debt, or any portion of it, within 30 days after you receive this notice, we will assume that it is valid. If you notify us in writing within the 30 day period that you dispute this debt or any portion of it, we will obtain verification of the debt or a copy of any judgment and mail it to you. If the above creditor is not your original creditor and you submit a written request within the 30 day period for the name and address of the original creditor, we will supply such information to you.

If you do dispute this debt in writing in the 30day period, we will suspend collection activity until we send you verification.

If you contact our office please call Paul Hocker @ 913-982-0334 or toll free at 888-846-2138.

This communication is from a debt collector and this is an attempt to collect a debt and any information obtained will be used for that purpose.

Sincerely,

BERMAN & RABIN, P.A.

CCLBERM01D51BAR

\*\*\*Detach Lower Portion and Return with Payment\*\*\*



CLBERM01  
 PO Box 1022  
 Wixom MI 48393-1022

ADDRESS SERVICE REQUESTED

<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		CHECK CARD USING FOR PAYMENT	
CARD NUMBER PLUS 3 DIGIT SECURITY CODE (on back of card)			EXP. DATE /
CARDHOLDER NAME			AMOUNT \$
CARDHOLDER SIGNATURE			

October 2, 2012

D51BAR 883555705



DARRYL W CUTLER  
 915 Exeter Crst  
 Villanova PA 19085-2001

1320

Berman and Rabin, P.A.  
 PO Box 24327  
 Overland Park KS 66283-4327



File No: [REDACTED]-22  
 Balance: [REDACTED]